

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**J.L., Appellant**

**and**

**DEPARTMENT OF THE ARMY, CORPS OF  
ENGINEERS, Peterson, AL, Employer**

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**Docket No. 10-1468  
Issued: April 19, 2011**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Judge  
COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On May 5, 2010 appellant filed a timely appeal from an April 14, 2010 merit decision of the Office of Workers' Compensation Programs denying modification of his wage-loss benefits. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

**ISSUE**

The issue is whether the Office met its burden of proof to modify appellant's wage-earning capacity determination by reducing his compensation benefits to zero and terminating medical benefits effective May 9, 2010.

**FACTUAL HISTORY**

On May 5, 1987 appellant, then a 47-year-old maintenance worker, injured his low back and left leg while lifting timber and crossties in the performance of duty. He stopped work and returned on May 11, 1987. The Office accepted appellant's claim for left low back strain on

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

June 11, 1987. Appellant filed a claim on July 7, 1988 alleging that on June 28, 1988 he sustained a ruptured disc in his low back when a wood guardrail he was helping to move dropped from a backhoe bucket. He resigned effective July 26, 1988. On August 4, 1988 the Office accepted chronic low back strain and entered appellant on the periodic rolls. It referred him for vocational rehabilitation counseling beginning March 12, 1990. By decision dated February 22, 1995, the Office found that appellant's capacity to perform the duties of a security guard represented his wage-earning capacity.

On April 10, 2007 the Office referred appellant for a second opinion evaluation to Dr. Harold H. Alexander, a Board-certified orthopedic surgeon, who examined appellant on April 30, 2007 and provided a May 1, 2007 report. Dr. Alexander reviewed the statement of accepted facts and his accepted employment injuries. He found that appellant had limited range of motion of the back, with ¼ inch atrophy of his left calf with no motor or sensory changes. Dr. Alexander diagnosed degenerative disc disease of the cervical and lumbosacral spine. He opined that appellant had no residuals of his accepted chronic low back strain. Dr. Alexander stated, "Back strain lasts a few month, but the claimant does have continued back and neck pain based on normal progression of degenerative disc disease seen in his age group." He advised that appellant's prognosis was guarded and recommended an exercise program and over-the-counter anti-inflammatories.

By letter dated September 4, 2009, the Office informed appellant that there was no current medical evidence of record and requested a narrative medical report within 30 days.

In a letter dated January 29, 2010, the Office proposed to terminate appellant's medical benefits and to modify his wage-earning capacity determination to reflect no loss of earning capacity based on Dr. Alexander's May 1, 2007 report. In response, by letter dated February 9, 2010, appellant requested a change of physicians. He made a second request for a change of physicians on February 28, 2010.

By decision dated April 14, 2010, the Office terminated appellant's medical benefits and modified his wage-earning capacity determination, reducing his monetary benefits to zero. It found that Dr. Alexander's April 30, 2007 report was entitled to the weight of the medical evidence and established that appellant had no continuing employment-related residuals or disability.

### **LEGAL PRECEDENT**

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.<sup>2</sup> After it has determined that an employee has disability causally related to his or her federal employment, it may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.<sup>3</sup> The right to medical benefits for an accepted condition is not limited to the period of entitlement to disability.<sup>4</sup> To terminate

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<sup>2</sup> *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

<sup>3</sup> *David W. Pickett*, 54 ECAB 272 (2002).

<sup>4</sup> *Furman G. Peake*, 41 ECAB 361, 364 (1990).

authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.<sup>5</sup> The Board has held that the medical evidence upon which the Office relies must provide a detailed description of appellant's condition and be of a reasonably current medical evaluation.<sup>6</sup>

A wage-earning capacity decision is a determination that a specific amount of earnings, either actual earnings or earnings from a selected position, represents the ability to earn wages.<sup>7</sup> An injured employee who is either unable to return to the position held when injured or unable to earn equivalent wages, but who is not totally disabled for all gainful employment, is entitled to compensation computed on his loss of wage-earning capacity.<sup>8</sup> Once the wage-earning capacity of an injured employee is determined, modification of such determination is not warranted unless there is a material change in the nature and extent of the injury-related condition, the employee has been retrained or otherwise vocationally rehabilitated, or the original determination was erroneous.<sup>9</sup> The burden of proof is on the party attempting to show a modification of the wage-earning capacity determination.<sup>10</sup>

### ANALYSIS

Appellant's claim was accepted for two low back injuries on May 4, 1987 when lifting timber and crossties and on June 28, 1988 while moving a wooden guardrail. He received compensation benefits under a February 22, 1995 wage-earning capacity determination.

In modifying the 1995 determination and terminating medical benefits, the Office relied on the May 1, 2007 report of Dr. Alexander. The Board finds that this report is not sufficiently detailed or current to support modification of appellant's 1995 wage-earning capacity and terminate his medical benefits.

Dr. Alexander examined appellant on April 30, 2007. His report provided a review of appellant's history of injury and findings on physical examination, including limitation of back motion in flexion, extension, side bending and rotation. Dr. Alexander also noted atrophy of the left calf. In explaining the diagnosis, he attributed appellant's orthopedic condition to degenerative disc disease of the lumbosacral spine. As to causal relation, Dr. Alexander noted only that he did not believe appellant continued to have residuals of the accepted injuries. He attributed appellant's back pain to normal progression of degenerative disease seen in his age group. The Board finds that Dr. Alexander did not provide a fully rationalized medical opinion on causal relation. Dr. Alexander's opinion consists of brief responses to the questions posed by

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<sup>5</sup> *Carol S. Madsen*, 54 ECAB 331 (2003).

<sup>6</sup> *John D. Jackson*, 55 ECAB 465 (2004). Compare *Carl C. Green, Jr.*, 47 ECAB 737, 746 (1996) (six-month-old evaluation found reasonably current for purposes of wage-earning capacity determination) with *Anthony Pestana*, 39 ECAB 980 (1988) (three-year-old medical evaluation not reasonably current for wage-earning capacity determination).

<sup>7</sup> 5 U.S.C. § 8115(a); *Lee R. Sires*, 23 ECAB 12, 14 (1971).

<sup>8</sup> See *Lawrence D. Price*, 54 ECAB 734 (2003).

<sup>9</sup> *Sue A. Sedgwick*, 45 ECAB 211, 215-16 (1993); *Elmer Strong*, 17 ECAB 226, 228 (1965).

<sup>10</sup> *Selden H. Swartz*, 55 ECAB 272, 278 (2004); *Gary L. Moreland*, 54 ECAB 638 (2003).

the Office and is of a speculative and equivocal character.<sup>11</sup> To be of probative value, a physician's opinion on causal relationship should be one of reasonable medical certainty.<sup>12</sup>

The Board finds that Dr. Alexander's report is of diminished probative value and does not clearly establish that appellant's accepted condition resolved without disability or medical residuals. The 2007 opinion of the referral physician is not sufficiently detailed or rationalized to support the Office's modification of wage loss or termination of medical benefits. As noted, the evaluation of appellant on April 30, 2007 is not reasonably current to the April 14, 2010 decision. For these reasons, the Board will reverse.

### **CONCLUSION**

The Board finds that the Office did not meet its burden of proof to modify appellant's wage-loss benefits to zero or terminate his medical benefits.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the April 14, 2010 decision of the Office of Workers' Compensation Programs is reversed.

Issued: April 19, 2011  
Washington, DC

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>11</sup> See *Michael R. Shaffer*, 55 ECAB 339 (2004).

<sup>12</sup> See *Beverly R. Jones*, 55 ECAB 411 (2004).